REMARKS

In the final Office Action of July 19, 2005,[1] claims 1-51 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,311,095 ("*Brown*"). The Examiner also objected to dependent claim 47. Applicant addresses the rejection and objection below.

Objection to claim 47

The Examiner objected to claim 47, averring that "[d]ependent apparatus claim 47 is linked to independent method claims 1, 9 and 18" (final Office Action "OA" at 2). The Examiner's objection, however, is ambiguous. The final Office Action does not articulate a basis for the objection and does not provide particular reasoning supporting the objection. Nonetheless, Applicant submits that claim 47, which recites "computer implementable processor steps" for performing the method recited in any one of claims 1, 9, and 18, is a proper claim. Should the Examiner continue to dispute the propriety of claim 47, Applicant requests a new non-final Office Action providing an appropriate basis and supporting reasoning for the objection.

Section 102(e) rejection of claims 1-51

Applicant traverses the § 102(e) rejection of claims 1-51 because *Brown* fails to anticipate the claims. In order to properly anticipate Applicant's claimed invention under 35 U.S.C. § 102, each and every element of the claim at issue must be found, either expressly described or under principles of inherency, in a single prior art reference. Further, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *See* M.P.E.P. § 2131. Finally, "[t]he elements must be arranged as required by the claim." *Id.*

[1] The final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether or not any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the final Office Action.

Brown fails to anticipate claim 1 because the reference fails to teach each and every feature of the claim. In particular, as explained below, *Brown* does not teach at least the *utilizing said stored model data*, *determining for said identified items*, and *generating scheduling data* features of claim 1.

Brown is directed to simulating and modeling "biopharmaceutical batch process manufacturing facilities" (Abstract). *Brown* fails to disclose the "utilizing said stored model data" feature of claim 1. In alleging that *Brown* discloses this feature, the Examiner noted *Brown*'s disclosure of performing "scale calculations" to "determine the size and capacity of the equipment necessary to produce the desired amount of product per batch" (OA at 3, *Brown*, col. 2, lines 45-48). Contrary to the Examiner's position, this portion of *Brown* does not constitute the claimed "utilizing said stored model data" feature. Determining the size and capacity of equipment does not constitute "utilizing said stored model data to determine for each item of said identified items of equipment a minimum possible simulated processing time required for simulated processing of said latest initiated batch," as claimed (emphasis added). Indeed, neither the relied upon portion nor any other portion of *Brown* teaches the "utilizing said stored model data" feature of claim 1.

Brown further fails to disclose the "determining for said identified items" feature of claim 1. While alleging that *Brown* discloses this feature, the Examiner does not indicate a specific portion of *Brown* supporting the Examiner's position and failed to explain the relevance of any such portions of the reference. The Examiner appears to be attempting to improperly shift the burden to Applicant to identify any potentially relevant passages from *Brown* and respond accordingly. Applicant submits that such practice does not meet the requirements of 37 C.F.R. § 1.104(c), which requires the Examiner to explain the pertinence of each reference

relied upon, and the requirements of M.P.E.P. § 706.02(j), which states that the examiner should set forth "the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s)."

Nonetheless, Applicant submits that *Brown* does not disclose the claimed "determining for said identified items" feature of claim 1. While mentioning determining size and capacity of equipment, *Brown* does not teach "determining for said identified items of equipment which are currently in use for processing batches currently being processed, the greatest time of use of previously simulated in processing batches using said items of equipment," as claimed. Should the Examiner continue to dispute the patentability of the claim 1, Applicant requests a new non-final Office Action identifying where *Brown* supports the Examiner's position.

Additionally, *Brown* fails to disclose the "generating scheduling data" feature of claim 1. While *Brown* discloses generating a "process schedule that identifies initiation and completion times for . . . tasks in the process sequence," the reference does not teach

generating scheduling data for the next batch to be initiated after the latest initiated batch to cause the time between the initiation of said latest initiated batch and said next batch within said simulation to be equal to the greater of the maximum of said minimum process times for said items of equipment involved in simulated processing of said next batch and said greatest time of use for said identified items of equipment currently in use

as recited in claim 1.

In alleging that *Brown* discloses the claimed "generating scheduling data" feature, the Examiner noted *Brown*'s disclosure regarding generating a "process time line" (col. 13, lines 15-29) and alleged that it would be "designer choice with regard to process time" (OA at 4). The cited portion of *Brown* merely describes generating a process time line that includes start and stop times for tasks. Neither this cited portion nor any other portion of *Brown* discloses the claimed "generating scheduling data" feature. Further, the Examiner's conjectural allegation that

it would be "designer choice with regard to process time" is completely unsupported by evidence and fails to establish that *Brown* teaches the claimed "generating scheduling data" feature.

Applicant reminds the Examiner that a rejection under § 102 is proper only when the claimed subject matter is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972). As noted above, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131.

In this case, *Brown* does not identically describe the subject matter of claim 1 "in as complete detail as is contained in the . . . claim." Furthermore, even if all of the elements of independent claim 1 could be found in various teachings of *Brown* – Applicant disputing that contention – the reference does not clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the claimed invention "without any need for picking, choosing, and combining various disclosures." *In re Arkley*, 455 F.2d 586, 587,172 USPQ 524, 526 (CCPA 1972) (emphasis added).

Because *Brown* does not teach each and every element of claim 1, as a matter of law, it cannot anticipate that claim. As such, the rejection of claim 1 under 35 U.S.C. §102(e) based on *Brown* should be withdrawn.

With regard to independent claim 9, *Brown* fails to teach at least "determining whether any process of said plurality of processes to be simulated is associated with rate data identifying the respective associated process as utilizing a utility at a rate," as claimed. In alleging that *Brown* discloses this feature, the Examiner noted (OA at 8) *Brown*'s disclosure of scheduling cycles and "cycle offset duration" for unit operations in a process (col. 5, lines 58-67). The Examiner also noted (OA at 8) *Brown*'s disclosure regarding the various levels of cycle scheduling, i.e., "[c]ycles per unit operation," "cycles per batch," and "cycles per process" (col.

5, line 65 - col. 6, line 1-39). Neither these cited portions nor any other portions of *Brown* teach "determining whether any process of said plurality of processes to be simulated is associated with rate data identifying the respective associated process as utilizing a utility at a rate," as claimed (emphasis added). Indeed, *Brown*'s system does not determine whether a process to be simulated is associated with rate data identifying the process as utilizing a utility (e.g., electricity, water, etc.) at a rate. Because *Brown* does not teach each and every element of claim 9, as a matter of law, it cannot anticipate that claim. The § 102(e) rejection of claim 9 based on *Brown* should therefore be withdrawn.

With regard to independent claim 18, *Brown* fails to teach at least "determining for the processes to be simulated whether output data generated for the previous step in said simulation fulfils the one or more continuation conditions defined by the stored data associated with said processes being simulated," as claimed. The Examiner noted (OA at 13) *Brown*'s disclosure regarding "outputs of calculation sets" (col. 11, lines 13-21) and also *Brown*'s disclosure regarding the "cycles per batch" level of cycle scheduling (col. 6, lines 9-16). Even if *Brown*'s calculation set "outputs" were consistent with the claimed "output data," the reference does not teach determining whether the output "fulfils . . . one or more continuation conditions defined by the stored data associated with said processes being simulated," as claimed. The Examiner alleged that "a cycle is delayed until the previous cycle is completed" (OA at 13). Even if that allegation were valid, *Brown* does not teach the "determining" feature of claim 18. That is, delaying a cycle until the previous cycle is completed does not constitute "determining . . . whether output data generated for the previous step in said simulation fulfils the one or more continuation conditions defined by the stored data associated with said processes being simulated," as claimed. Contrary to the Examiner's apparent position, whether a previous cycle

is completed, as allegedly disclosed by *Brown*, does not constitute one or more continuation conditions defined by the stored data, as recited in claim 18.

Brown further fails to teach at least "if at least one continuation condition associated with a process being simulated is not fulfilled by said generated output data simulating a delay in the continued processing of said process," as recited in claim 18. The Examiner again noted (OA at 13) *Brown*'s disclosure regarding "outputs of calculation sets" (col. 11, lines 13-21) and also *Brown*'s disclosure regarding the "cycles per batch" level of cycle scheduling (col. 6, lines 9-16). Further, the Examiner alleged that "a cycle is delayed until the previous cycle is completed" (OA at 13). Even if *Brown*'s calculation set "outputs" were consistent with the claimed "output data," and even if *Brown*'s system were to delay a cycle until the previous cycle is completed, the reference does not teach the "simulating" feature of claim 18. Generating calculation set outputs and delaying a cycle until the previous cycle is completed, as allegedly disclosed by *Brown*, does not constitute "if at least one continuation condition associated with a process being simulated is not fulfilled by said generated output data simulating a delay in the continued processing of said process," as recited in claim 18. *Brown* does not disclose simulating a delay in the continued processing of a process being simulated if at least one continuation condition associated with the simulated process is not fulfilled by the calculation set "outputs." Indeed, neither the cited portions nor any other portions of *Brown* teach the "simulating" feature of claim 18.

Because *Brown* does not teach each and every element of claim 18, as a matter of law, it cannot anticipate that claim. As such, the § 102(e) rejection of claim 18 based on *Brown* should be withdrawn.

Claims 2-8 depend from claim 1; claims 10-17 depend from claim 9; claims 19 and 20 depend from claim 18; and claims 21 and 47 depend in the alternative from claims 1, 9, and 18.

Claims 2-8, 10-17, 19-21, and 47 are distinguishable from *Brown* for at least reasons similar to those presented above in connection with claims 1, 9, and 18. The § 102(e) rejection of claims 2-8, 10-17, 19-21, and 47 should therefore be withdrawn. Applicant thus requests withdrawal of the § 102(e) rejection and the timely allowance of claims 1-21 and 47.

Independent claims 22, 30, and 38, although of different scope than claims 1, 9, and 18 (and from each other), include features similar to those of claims 1, 9, and 18, respectively. For at least reasons similar to those presented above in connection with claims 1, 9, and 18, claims 22, 30, and 38 are distinguishable from *Brown*. Claims 23-29 depend from claim 22; claims 31-37 depend from claim 30; claims 39-46 and 49-51 depend from claim 39; and claim 48 depends in the alternative from claims 22, 30, and 38. Claims 23-29, 31-37, 39-46 and 48-51 require all of the features of base claims 22, 30, and 38, respectively, and therefore are similarly distinguishable from *Brown*. Applicant thus requests withdrawal of the § 102(e) rejection and the timely allowance of claims 22-46 and 48-51.

Conclusion

Applicant requests reconsideration of the application and withdrawal of the outstanding rejections, in view of the foregoing. Pending claims 1-51 are in condition for allowance, and Applicant requests a favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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